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**RULE PROPOSALS**

**AGRICULTURE**

**DIVISION OF FOOD AND NUTRITION**

41 N.J.R. 2749(a)

**Proposed Readoption with Amendments: N.J.A.C. 2:36**

[Click here to view Interested Persons Statement](#)

**Child Nutrition Programs**

Authorized By: State Board of Agriculture and Douglas H. Fisher, Secretary, Department of Agriculture.

Authority: N.J.S.A. 18A:33-4 and 5 and 18A:33-9 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-219.

Submit comments by September 18, 2009 to:

Emma Davis-Kovacs, Director  
Division of Food and Nutrition  
New Jersey Department of Agriculture  
PO Box 334  
Trenton, NJ 08625-0334

The agency proposal follows:

**Summary**

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 2:36, Child Nutrition Programs, which was scheduled to expire June 30, 2009, is now scheduled to expire on December 27, 2009. The Department of Agriculture proposes to readopt these rules with minor amendments, as they have been found to be necessary, reasonable and proper for the purposes for which they were promulgated.

Terms have been revised to more specifically track the Federal terminology and definitions where appropriate in this fully Federally funded program and updated implementation methods are identified.

The Child Nutrition programs include school breakfast, lunch, after school snack, special milk, split-session kindergarten milk and fresh fruit and vegetable programs administered by the Department and following criteria set forth in Federal regulations codified at 7 CFR Parts 210, 220, 215 and 245. The rules proposed for readoption are generally unchanged except for proposed amendments to existing terms to use the Federal terms and to incorporate the new Federal fresh fruit and vegetable program.

The nutritional guidelines are based on the Dietary Guidelines for Americans (DGAs) developed by the United States Department of Agriculture's Center on Nutrition Policy and Promotion. The DGAs categorize food into specific groups and provide recommendations for how many daily servings of each group to eat. The DGAs also provide information on engaging in physical activity and maintaining a healthy body weight.

The New Jersey Department of Agriculture's Division of Food and Nutrition feeds approximately 670,000 school children daily through the Federal School Breakfast and Lunch programs. These programs provide nutritionally balanced meals to children at low or no cost.

Through the 2003 Healthy Choices, Healthy Kids campaign, a joint initiative among Departments of Agriculture, Education and Health and Senior Services to combat childhood obesity and Type II diabetes and ensure children would have access to healthy and nutritious food, the Department of Agriculture required school districts to adopt a school nutrition policy, providing a model policy as a guide. As of September 2007, school districts adopted the Department's Model School Nutrition Policy (Policy). There was improvement in the nutritional value of food offered in cafeteria a la carte lines, vending machines, school stores and fundraisers, as well as limits to the type of foods that compete with the Federal school meal programs. There were steps to promote healthy eating habits and to reinforce nutrition education as required by the New Jersey Department of Education's Core Curriculum Standards. The Department of Agriculture supports a program of healthier food choices. The current Policy, along with the Core Curriculum Standards, provides a consistent health message through teaching and through actual food choices available on school property.

Data collected during 2004-2005 school year in the School Nutrition Dietary Assessment Study III (SNDA) study sponsored by the Food and Nutrition Service (FNS) of USDA showed that schools have improved the nutritional quality of the National School Lunch and Breakfast Program school meals. New Jersey's requirement that schools adopt the Model School Nutrition Policy has also improved the nutritional quality of foods available to students outside of the meal programs.

The Policy prohibits the sale, service or free promotion of foods of minimal nutritional value to the entire length of the academic school day, as well as expanding the restricted categories of food items beyond those identified by USDA as foods of minimal nutritional value (FMNV). The Policy also requires schools to provide adequate time for student meal service and consumption and recommends that recess be scheduled before lunch.

N.J.A.C. 2:36-1.1 sets forth the definitions of terms used in the rules. The Department is proposing amendments to the definitions to more specifically track the Federal terminology for clarification.

The definitions of "Child Nutrition Programs" and "School Nutrition Programs" were expanded to include the Federally funded Fresh Fruit and Vegetable Program as administered by the Bureau of Child Nutrition.

The term "school food authority" and its definition have been replaced with the Federal term "local educational agency" and its Federal definition.

The name of the "Model School Nutrition Policy" has been changed to "New Jersey School Nutrition/Wellness Policy" since all local educational agencies (LEAs) were required to adopt a policy consistent with the New Jersey Department of Agriculture's "Model School Nutrition Policy" effective September 2007.

[page=2750] The definition of "nonprofit school food service" has been added to clarify that all food service operations conducted by the school food authority must be conducted principally for the benefit of school children, all of the revenue from which is to be used solely for the operation or improvement of such food services.

N.J.A.C. 2:36-1.2 explains the Policy and Agreement with the Federal program of the School Nutrition Programs and updates the methodology to include electronic certification of compliance through the web-based School Nutrition Electronic Application and Reimbursement System (SNEARS) program.

N.J.A.C. 2:36-1.3 explains the Federal Income Eligibility Guidelines set forth at 7 CFR Part 245 that shall be utilized by all sponsors participating in the child nutrition programs and all nonparticipating schools for the purpose of survey requirements as defined within N.J.A.C. 2:36-1.4.

N.J.A.C. 2:36-1.4 explains the coordination of the data reporting date as specified under the School Funding Reform Act of 2008, and provides the purpose of the survey requirement.

N.J.A.C. 2:36-1.5 explains the free and reduced price meal and or milk program application. As specified under N.J.A.C. 2:36-1.4, each school is required to survey the student population enrolled to determine which students are eligible to receive free or reduced price meals or free milk. The Department is proposing clarifying language in subsection (a) to reflect the electronic access of the application documents by the school districts via an on-line web based process. The Department is proposing an amendment to subsection (c) to clarify that the language translations of the Free and Reduced Price Meal and/or Free Milk Application other than English and Spanish are available on the USDA Food and Nutrition Service website in 25 different languages. Previously, applications in French were also available upon request from the Division. The shifting population demographics and demand did not reflect a need to single out from the other 25 additional languages that are available online. Because the Federal government changed the name and procedures for free and reduced price meal application and the protocols to collect "household application" information rather than individual students' information on the application, the word "household" is added for consistency with the Federal terminology.

N.J.A.C. 2:36-1.6 concerns the participation requirements for the school lunch and breakfast programs.

N.J.A.C. 2:36-1.7 explains the source of the local school nutrition policy. The Department is proposing an amendment to revise the name of the policy in the section heading and throughout the subchapter to update the reference to "New Jersey School Nutrition/Wellness Policy." The Department is proposing to delete in subsection (a), the reference to the 2006 transitional school district/sponsor requirements that were in place prior to full adoption of the New Jersey Model School Nutrition Policy in September 2007 and in subsection (b), to change the name of the Model Policy to the New Jersey School Nutrition/Wellness Policy as set forth in the Chapter Appendix, and unchanged except for the name.

N.J.A.C. 2:36-1.8 provides for consistency in nutrition standards between the Department and Federal nutrition standards and clarifies the requirement for compliance with the State Competitive Food Policy.

N.J.A.C. 2:36-1.9 contains reference to the policy and the language is proposed for amendment to replace Model School Nutrition Policy with New Jersey School Nutrition/Wellness Policy where ever it appears.

N.J.A.C. 2:36-1.10 explains the basis for the maximum meal and milk charges under Federal regulations.

N.J.A.C. 2:36-1.11 provides limitations on certain foods and beverage items on school property.

N.J.A.C. 2:36-1.12 provides for free, reduced price and paid meal accountability.

N.J.A.C. 2:36-1.13 provides standards for biosecurity in food service.

N.J.A.C. 2:36 Appendix provides the nutrition and physical exercise principles underlying the New Jersey School Nutrition/Wellness Policy.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

Readoption of these rules will continue to provide a basis for school districts to improve the nutritional value of foods offered both inside and outside the food service area and the school meal periods. The purpose is to ensure sound nutrition principles in school while reinforcing nutrition education programs and promoting healthful eating habits. The requirement to serve breakfast in targeted schools will provide balanced nutrition for the morning hours when students experience their most difficult academic classes. Significant research demonstrates that students who participate in a school based breakfast program perform better academically, concentrate better and have fewer disciplinary problems.

### **Economic Impact**

Readoption of these rules will not increase State and local expenditures for the provision of the school lunch and breakfast programs. The Department of Agriculture provides school districts with State and Federal cash assistance and donated foods acquired by the United States Department of Agriculture to be used to assist schools in serving nutritious breakfasts and lunches to children each school day and offset the costs associated with providing these meals (7 CFR Parts 210 and 220).

The costs to the State for these programs is only the State match required for participation in the Federal school lunch program, and a 10 cents per meal subsidy for the Federal school breakfast program. In 2009, the State amount for lunch was approximately \$ 7.8 million in program funds generating approximately \$ 157 million in Federal program funds, and \$ 3 million in non-match State funds for the Federal school breakfast program generating approximately \$ 38 million in Federal school breakfast subsidies. An additional \$ 134,000 in State administrative match dollars is required for administration of the programs at the State level. The remainder of the program funding is Federal, indicating the magnitude of the Federal subsidy from which the State benefits as a result of its participation in the Federal programs. The economic impact to New Jersey school children and their families is positive; as nutritious breakfasts and lunches are required to be available at regulated prices to all students in schools where specified levels of students qualify for free or reduced price breakfast and lunches and offered free and at reduced prices to those students eligible. There is a requirement to survey nonparticipating districts by N.J.S.A. 18A:33-4 and is not new to these rules.

### **Federal Standards Analysis**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-23 (P.L. 1995, c. 65) require administrative agencies, which adopt, readopt or amend any State rules that exceed any Federal standards or requirements to include in the rulemaking a comparison between two sets of standards and an explanation of the costs and benefits associated with adopting a State standard that exceeds a Federal standard. This chapter has been developed in accordance with Federal school nutrition regulations and is primarily funded by Federal United States Department of Agriculture Child Nutrition funds as per 7 CFR Parts 210, 220 and 215.

Under the Federal rules, school participation in Federal school nutrition programs is optional. The rules proposed for readoption exceed the Federal rules in that they require all schools with five percent or more of enrollment eligible for free or reduced priced meals to provide a school lunch program and/or any school with 20 percent or more of enrollment eligible for these same benefits to offer the school breakfast program and to offer free and reduced-price meals to all eligible students. This requirement implements State statute (N.J.S.A. 18A:33-4 and 18A:33-5 and P.L. 2003, c. 4), however, and thus could not be limited without statutory change. The Competitive Food Policy section (N.J.A.C. 2:36-1.10) also exceeds Federal standards in prohibiting not only the promotion but also the sale of foods of

minimal nutritional value during certain periods of the day, and in extending the time period in which these activities are prohibited beyond that specified in the Federal regulations. This section further exceeds Federal standards by applying the requirements of this section to districts that are not participants in the Federal program but required by State statute to make school lunch and/or school breakfast available. These enhancements to the Federal regulations were made as a result of a finding that the Federal regulations were not sufficiently ensuring the nutritional integrity of school nutrition [page=2751] programs in New Jersey schools. The rules proposed for readoption also charge the State with establishing a maximum per meal and milk charge, which is not explicitly required by Federal regulations. The Federal regulations do set a maximum charge for reduced-price meals and suggest that pricing otherwise take into consideration the Federal subsidy; the rules proposed for readoption put that suggestion into operation by setting a maximum charge that includes the Federal subsidy as one of its parameters.

**Jobs Impact**

It is not anticipated that the rules proposed for readoption with amendments will result in the generation or loss of jobs.

**Agriculture Industry Impact**

The rules proposed for readoption with amendments will have a positive impact on New Jersey Agriculture by increasing the number of meal opportunities for schools to use locally grown fruits and vegetables.

**Regulatory Flexibility Statement**

The rules proposed for readoption with amendments will impose no additional requirements beyond those currently required by Federal regulations. In addition, there will be no costs incurred for employment of professional services or any capital expenditures. The proposed amendments do not affect small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The requirements of these rules impact solely upon local boards of education.

**Smart Growth Impact**

The rules proposed for readoption with amendments are consistent with the economic strategies as outlined within the Department's Smart Growth Plan. The proposed amendments are consistent with the State's smart growth goals as they incorporate the Federally funded Fresh Fruit and Vegetable Program into the child nutrition programs and help to encourage the continued viability of the State's fruit and vegetable industry. Therefore, the Department anticipates that there will be a positive impact on the achievement of smart growth in the implementation of the State's Development and Redevelopment Plan.

**Housing Affordability Impact**

The rules proposed for readoption with amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules guide the Child Nutrition Programs, set forth nutrition standards and assure accountability in management of the Federal program.

**Smart Growth Development Impact**

The rules proposed for readoption with amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules guide the Child Nutrition Programs, set forth nutrition standards and assure accountability in management of the Federal

Program.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:36.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 1. GENERAL PROVISIONS

### 2:36-1.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

...

"Child Nutrition Programs" means the National School Lunch Program, School Breakfast Program, After School Snack Program, **Fresh Fruit and Vegetable Program**, Special Milk and Split-Session Kindergarten Milk Programs, Child Care Food Programs and the Summer Food Service Program.

...

"Local educational agency" means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools, which has legal authority to operate the National School Lunch, School Breakfast, After School Snack, Fresh Fruit and Vegetable or Special Milk Program.

...

"[Model] New Jersey School Nutrition/Wellness Policy" means the nutrition policy containing standards developed by the State Department of Agriculture, incorporated herein by reference as the chapter Appendix.

...

"Nonprofit school food service" means that all food service operations conducted by the school food authority must be conducted principally for the benefit of school children, all of the revenue from which is to be used solely for the operation or improvement of such food services.

...

"School food authority" means the governing body which is responsible for the administration of one or more schools; which has the legal authority to operate the National School Lunch, School Breakfast, After School Snack or Special Milk Program.]

"School Nutrition Programs" means those programs administered by the Bureau of Child Nutrition, which include the National School Lunch Program, School Breakfast Program, After School Snack Program, **Fresh Fruit and Vegetable Program** and Special Milk Programs.

...

#### 2:36-1.2 Policy and Agreement for School Nutrition Programs

(a) All school districts participating under one of the Federal child nutrition programs shall [adopt a free and reduced price policy pursuant to Federal regulations 7 CFR Parts 210, 215, 220 and 245 on the form prescribed by the Secretary entitled "Policy for the Free and Reduced-Price Meals or Free Milk." This form is available from the Division of Food and Nutrition, Bureau of Child Nutrition, New Jersey Department of Agriculture, PO Box 334, Trenton, NJ 08625-0334.] **electronically certify compliance with the "Policy for Free and Reduced Price Meals or Free Milk" pursuant to Federal regulations 7 CFR Parts 210, 215, 220 and 245. The policy is available through the Department's web-based program School Nutrition Electronic Application and Reimbursement System (SNEARS).**

(b)-(c) (No change.)

#### 2:36-1.5 Free and reduced price meal and/or free milk application

(a) The Division shall prepare [an] **a household** application form that shall be used by all school districts. A copy of the application [completed by each school district must be filed with the Division together with the Free and Reduced Priced Policy described in N.J.A.C. 2:36-1.2] **shall be provided to each district upon approval of a web-based submission/certification of the accompanying letter to parents.**

(b) (No change.)

(c) Applications in languages other than English must be provided by the school food authority where non-English speaking parents are possible applicants. (An application in Spanish [and French] is available upon request from the Division of Food and Nutrition, Bureau of Child Nutrition.) **Other language translations are available on the USDA Food and Nutrition Service website at: <http://www.fns.usda.gov/cnd/FRP/frp.process.htm>.**

(d)-(e) (No change.)

#### 2:36-1.7 [Local school nutrition policy] **New Jersey School Nutrition/Wellness Policy**

(a) [By September 2006 school districts/sponsors shall adopt a local School Nutrition Policy.] The Department hereby adopts and incorporates by reference the Dietary Guidelines for Americans and the USDA nutrition standards for National School Lunch, School Breakfast and/or After School Snack programs as required by 7 CFR Parts 210, 215, 220 [page=2752] and 245 as the basis for [this] local [policy] **policies**. Such policies shall regulate the types of food items offered outside the Federal meal requirements, such as a la carte sales, vending machines, school stores and fundraisers. The policy shall also address the dining environment, adequate time for student meal service and consumption and coordination of lunch and recess or physical education schedules. [The policy adopted by the school district/sponsor shall be implemented by September 2006.]

1.-2. (No change.)

(b) [By September 2007, each] **Each** school district/sponsor shall implement a policy consistent with New Jersey [Department of Agriculture's Model] School Nutrition/**Wellness** Policy, which is set forth in the chapter Appendix. The [Model] **New Jersey School Nutrition/Wellness** Policy is a minimum standard and does not preclude the adoption of a more stringent policy by the school district/sponsor.

#### 2:36-1.9 Review and evaluation

- (a) Each sponsor's implementation of the Free and Reduced Price Policy and the [Model] **New Jersey** School Nutrition/**Wellness** Policy shall be reviewed and evaluated by the Division on a continuing basis.
- (b) Federal and State child nutrition program funds may be withheld and/or fiscal action taken against sponsors (see 7 CFR [§] 210.19(c), 215.12(a), 220.14(a) and 245.10) found not to be in compliance with applicable Federal regulations (7 CFR Parts 210, 215, 220 and 245) and the [Department's Model] **New Jersey** School Nutrition/**Wellness** Policy.
- (c) Sponsors shall not alter or amend standards set forth in the Free and Reduced Price Policy or the [Department's Model] **New Jersey** School Nutrition/**Wellness** Policy without prior written approval by the Division.

#### 2:36-1.11 Competitive food policy

- (a) The competitive food policy prohibits certain snack and beverage items by regulations promulgated by the USDA for the administration of child nutrition programs and as contained in the [Department's Model] **New Jersey** School Nutrition/**Wellness** Policy. The following items shall not be served, sold or given away as a free promotion anywhere on school property at any time before the end of the school day, including items served in the reimbursable After School Snack Program:

1.-3. (No change.)

(b)-(g) (No change.)

#### **APPENDIX**

[Model] **New Jersey** School Nutrition/**Wellness** Policy

(No change.)